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12

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 MICROSOFT CORPORATION, a
Washington corporation,

16 Plaintiff,

17 v.

18 EEE BUSINESS INC., a California
corporation, d/b/a EBUSZONE.COM and
19 EBZ EBZ; MING NI SHANG; LIFENG
WANG, a/k/a ALICE WANG; NANCY
20 LINKER; and JOHN DOES 1-5,

21 Defendants.
22
23

No. 3:07-cv-01839-JSW

**JOINT CASE MANAGEMENT
STATEMENT**

24 Pursuant to this Court's Order Setting Case Management Conference and Requiring
25 Joint Case Management Statement (Dkt. # 12), the parties' joint case management
26 statement was due five court days prior to the case management conference, which is

1 presently scheduled for August 24, 2007. Because the single defendant to have appeared in
2 this matter, Defendant Lifeng (Alice) Wang ("Defendant Wang"), failed to participate in
3 the preparation of the joint case management statement prior to its August 17, 2007 due
4 date, Plaintiff Microsoft Corporation ("Microsoft") submitted a case management statement
5 on its own behalf August 17, 2007. *See* Plaintiff Microsoft Corporation's Case
6 Management Statement (Dkt. # 33); Declaration of Jeremy Roller (Dkt. # 34).

7 On August 20, 2007, Defendant Wang's counsel emailed Microsoft's counsel with
8 certain additions to a draft joint case management statement Microsoft previously had
9 provided to Defendant Wang. For the convenience of the Court and the parties, Microsoft
10 now submits this Joint Case Management Statement.

11 1. **Jurisdiction and Service.**

12 This Court has subject matter jurisdiction over Microsoft's claims for copyright
13 infringement pursuant to 17 U.S.C. § 501 and 28 U.S.C. §§ 1331 and 1338(a), and venue is
14 proper in the Northern District of California pursuant to 28 U.S.C. §§ 1391(b) and 1400(a).
15 Defendant Wang conducts business and resides in the Northern District in Santa Clara
16 County and was served on May 30, 2007. Defendants EEE Business, Inc. and Ming Ni
17 Shang were also served on May 30, 2007, but have failed to appear or respond to the
18 Complaint herein. Defendant Nancy Linker has not been found and service has not been
19 effected upon her.

20 2. **Facts.**

21 a. **Factual Chronology:** Microsoft alleges the following: On September 29,
22 2006, a Microsoft investigator ordered one unit of Microsoft Windows XP Professional and
23 one unit of Microsoft Windows XP Professional x64 Edition through www.ebuszone.com
24 which, upon information and belief, is Defendants' web site. Microsoft examined the
25 software and determined that it infringed its copyrights because it was Microsoft Student
26 Media software ("Student Media"), which the Defendants were not authorized to use or

1 distribute, and which Microsoft believes was unlawfully imported to the United States
2 and/or distributed in interstate commerce by the John Doe Defendants. On January 3, 2007,
3 Microsoft delivered a letter by Federal Express to Defendants, demanding that they cease
4 and desist all infringing activity or risk legal action. Despite this warning, it was
5 determined through purchases by Microsoft investigators on January 14, 2007 (one unit
6 each of Windows XP Professional and Windows XP Professional x64 Edition) and
7 February 8, 2007 (one unit each of Windows XP Professional and Office 2003
8 Professional) that Defendants were continuing their distribution of Student Media and
9 Volume License Media through use of the web site www.ebuszone.com, thereby infringing
10 Microsoft's copyrights. The February 8, 2007 purchase also revealed that Defendants were
11 distributing unauthorized volume license keys on counterfeit volume license key labels.

12 Defendant Lifeng (Alice) Wang denies any involvement by her in the wrongful acts
13 or omissions alleged above.

14 b. **Principal factual issues in dispute:** Microsoft contends that the Defendants
15 imported to the United States Microsoft software, including but not limited to, Windows XP
16 and Office 2003, and other software and components covered by Microsoft's registered
17 copyrights and bearing Microsoft's registered trademarks, and/or distributed in the United
18 States that software, without approval or authorization from Microsoft. Defendant Wang
19 has denied these allegations.

20 3. **Legal Issues.**

21 (1) Whether Defendants infringed Microsoft's registered copyrights by importing
22 and/or distributing Microsoft software and components, without approval or authorization
23 from Microsoft, in violation of 17 U.S.C. §§ 501, 602; (2) whether Defendants' actions
24 were willful, as defined by 17 U.S.C. § 504(c)(2); (3) whether Defendants' actions violated
25 the Digital Millennium Copyright Act, 17 U.S.C. § 1201(a)(2); (4) whether Defendants'
26

1 actions violated the Anti-Counterfeiting Amendments Act of 2004, 18 U.S.C. § 2318; and
2 (5) whether Defendants are liable for tortious interference with contractual relations.

3 4. **Motions.**

4 There are no previous or pending motions in this matter. This Court has entered
5 default against Defendants EEE Business, Inc. and Ming Ni Shang. Microsoft intends to
6 bring a motion for default judgment against those Defendants.

7 5. **Amendment of Pleadings.**

8 Microsoft may amend its complaint if discovery reveals the identity of the John Doe
9 Defendants. The parties propose a deadline of November 14, 2007 for amending the
10 pleadings. Microsoft may request leave to amend its complaint after that date if discovery
11 regarding Defendants' source of illegally imported Microsoft Student Media software is not
12 forthcoming.

13 6. **Evidence Preservation.**

14 Plaintiff Microsoft's evidence is based on hard copies of purchased products
15 documented by hard-copy transactional records, which have been preserved for trial by
16 Microsoft.

17 Defendant Wang agrees to preserve any and all Microsoft software products in her
18 possession; copies of all business records, invoices, billing statements, orders and shipping
19 records relating to Defendants' sales and purchases of any Microsoft software products;
20 records containing contact information for the companies and/or individuals from whom
21 they acquired any Microsoft software for resale, including addresses, telephone numbers,
22 email addresses and website addresses; and copies of any correspondence, email or
23 otherwise, relating to any Microsoft software or products Defendants have acquired and/or
24 distributed.

25 7. **Disclosures.**

26 Microsoft and Defendant Wang have exchanged their initial disclosures.

1 Plaintiff Microsoft disclosed (i) the names and relevant information regarding
2 known fact witnesses, (ii) evidence relevant to its case (copyright and trademark
3 registrations, copies of web pages from www.surpluscomputers.com, infringing Student
4 Media distributed by Defendants in Microsoft's possession, and the invoices for the
5 infringing Student Media acquired by Microsoft's investigators), and (iii) the applicable
6 damages and statutory references thereto.

7 Defendant Wang disclosed herself as the only witness likely to have discoverable
8 information she may use in support of her defenses. Defendant Wang disclosed no
9 documents, data compilations, or tangible things in her possession that she may use in
10 support of her defenses, mainly because she was denied access to her former residence in
11 her divorce proceeding and she is currently under custody in a state correction facility due
12 to an alleged parole violation.

13 8. **Discovery.**

14 Initial Disclosures, pursuant to Fed. R. Civ. P. 26(a)(1), were exchanged as noted in
15 Paragraph 7 above. No other discovery has been conducted to date.

16 The parties do not currently anticipate the need for modifications to the limitations
17 on discovery imposed under the Federal Rules of Civil Procedure and the Local Civil Rules.
18 The parties, however, reserve their rights to request modification or limitations on
19 discovery as this case proceeds.

20 The parties have agreed on a proposed discovery plan as set forth in their Rule 26(f)
21 Report of Meeting.

22 9. **Class Actions.**

23 Not applicable.

24 10. **Related Cases.**

25 Not applicable.
26

11. **Relief.**

a. **Damages:** Microsoft will seek to recover actual damages, which include its losses and all profits Defendants have made as a result of their wrongful conduct, pursuant to 17 U.S.C. § 504(b). Alternatively, Microsoft is entitled to statutory damages pursuant to 17 U.S.C. § 504(c). In addition, because Defendants' infringement has been willful within the meaning of the Copyright Act, the award of statutory damages should be enhanced pursuant to 17 U.S.C. § 504(c)(2). Microsoft will also seek to recover actual damages and/or statutory damages as under the Digital Millennium Copyright Act, 17 U.S.C. § 1201, and the Anti-Counterfeiting Amendments Act of 2004, 18 U.S.C. § 2318.

b. **Bases for damage calculation:** Actual damages should be calculated based on the (i) lost sales and foregone profits to Microsoft caused by Defendants' infringing conduct, (ii) internal costs to Microsoft of investigating Defendants' infringing conduct, and (iii) profits directly attributable to Defendants' sales of Student Media software. Statutory damages will be calculated based on the number of Microsoft copyright infringements, with each copyright infringement assessed at no less than \$750 and no more than \$30,000, for non-willful infringements, and no more than \$150,000 each for willful infringement.

c. **Accounting:** Microsoft will seek an order, pursuant to 17 U.S.C. § 504, requiring Defendants to provide Microsoft a full and complete accounting of all profits received by Defendants from their distribution or sale of infringing Microsoft software and/or materials, and of any other amounts due and owing to Microsoft as a result of Defendants' illegal activities.

d. **Injunctive Relief:** Microsoft will seek a preliminary and permanent injunctive relief pursuant to 17 U.S.C. § 502 to prohibit Defendants from continuing their infringing conduct.

e. **Impoundment Order:** Microsoft will seek an order, pursuant to 17 U.S.C. §§ 503(a) and 509(a) and 28 U.S.C. § 1651(a), impounding all infringing Microsoft

1 software and/or materials, or any Microsoft documentation or packaging, and any related
2 items, including business records, that are in Defendants' possession or under their control,
3 and ordering the return, remedial destruction, or other appropriate disposition of all
4 impounded items.

5 f. **Constructive Trust:** Microsoft will seek an order, pursuant to 17 U.S.C. §
6 504(b) declaring that Defendants hold in trust, as constructive trustees for the benefit of
7 Microsoft, all "profits" received by Defendants from their importation, distribution or sale
8 of infringing Microsoft software and/or materials, and issue temporary, preliminary and
9 permanent injunctive relief enjoining and restraining Defendants and their agents from
10 transferring, concealing or dissipating all profits and assets acquired in whole or in part with
11 those profits.

12 g. **Attorney's Fees/Costs:** Microsoft will also seek to recover its attorney's
13 fees and costs of suit pursuant to 17 U.S.C. § 505.

14 12. **Settlement and Alternative Dispute Resolution.**

15 The parties have elected Mediation (ADR L.R. 6) as their ADR process. The ADR
16 plan was previously filed in accordance with the Court's scheduling order. Microsoft will
17 require discovery from Defendants in order to be in a position to negotiate a resolution.

18 13. **Consent to Magistrate Judge for All Purposes.**

19 The parties do not consent to having a magistrate judge conduct trial and enter
20 judgment. The parties will consent to a referral to a magistrate judge for general case
21 management and discovery issues.

22 14. **Other References.**

23 The case is not suitable for reference to binding arbitration, a special master, or the
24 Judicial Panel on Multidistrict Litigation.

1 15. **Narrowing of Issues.**

2 The parties agree that Microsoft holds valid copyright registrations in, *inter alia*,
3 (a) Microsoft Windows XP, (b) Microsoft Office 2003, (c) Microsoft Access 2003, (d)
4 Microsoft Excel 2003, (e) Microsoft Outlook 2003, (f) Microsoft PowerPoint 2003, and
5 (g) Microsoft Word 2003.

6 16. **Expedited Schedule.**

7 Not applicable.

8 17. **Scheduling.**

9 The parties propose the following case deadlines:

10 Plaintiff's expert disclosures:	October 29, 2007
11 Defendants' expert disclosures:	November 29, 2007
12 Discovery Cut-Off:	February 29, 2008
13 Deadline to add additional parties:	November 8, 2007
14 Dispositive Motions Deadline:	April 11, 2008
15 Pre-Trial Conference:	June 16, 2008
16 Trial Date:	July 21, 2008

17 18. **Trial.**

18 Defendant Alice Wang requests a trial by jury. Microsoft contends that Defendant
19 Wang failed timely to serve and file a jury demand as required by Fed. R. Civ. P. 38, and
20 reserves its right to move to strike any such demand as untimely if Defendant Wang does
21 serve and file a jury demand.

22 The parties expect that the trial will last approximately five days.

23 19. **Disclosure of Non-Party Interested Entities or Persons.**

24 Microsoft has filed the required Certification of Interested Entities or Persons under
25 Civil Local Rule 3-16.

20. **Other Matters.**

Not applicable.

DATED this 21st day of August, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the following parties,
by the means designated below, this 21st day of August, 2007:

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